

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO

-----X
V & D PROPERTIES, LLC,

Plaintiff,

-against-

SECURITY NATIONAL INSURANCE COMPANY.

Defendant.
-----X

Index No. ECF-2017-1805

ORDER

Case # 17-18-0033

WHEREAS, Defendant Security National Insurance Company moved for summary judgment dismissing Plaintiff's Complaint, upon the Affirmation of Kevin F. Buckley, dated January 14, 2019, with exhibits, the memorandum of law in support, Plaintiff's cross-motion for summary judgment on the issue of liability, Affirmation of Michael Longstreet, Affidavit of Thomas Dunsmoor, Affidavit of Thomas Niland, with exhibits, memorandum of law in opposition to motion and in support of cross-motion, and the memorandum of law in opposition to cross-motion and in further support of motion:


And the motion and cross-motion having been heard by the Hon. Gregory R. Gilbert, J.S.C. and a decision having been rendered:

IT IS HEREBY ORDERED AS FOLLOWS:

Plaintiff's cross-motion for summary judgment is denied and Defendant's motion for summary judgment is granted in accordance with the attached June 7, 2019 bench decision on the record before Hon. Gregory R. Gilbert, J.S.C.

Dated: Oswego, New York
June 14, 2019

So Ordered:


Hon. Gregory R. Gilbert
J.S.C.

1 STATE OF NEW YORK
2 SUPREME COURT : COUNTY OF OSWEGO

3 -----
4 V & D PROPERTIES, LLC,

INDEX #
ECF-2017-1805

5 Plaintiff,

6 vs.

7 SECURITY NATIONAL INSURANCE COMPANY,

BENCH DECISION

8 Defendant.
9 -----

10 Oswego County Courthouse
11 Oswego, New York
12 June 7, 2019

13 B E F O R E: HONORABLE GREGORY R. GILBERT
14 Supreme Court Justice

15
16
17
18 A P P E A R A N C E S:

19 FOR THE PLAINTIFF:
20 MICHAEL J. LONGSTREET, ESQ.
21 313 Montgomery Street
22 Syracuse, New York 13202

23 FOR THE DEFENDANT:
24 MOUND COTTON WOLLAN & GREENGRASS, LLP
25 One New York Plaza
New York, New York 10004
BY: BRADLEY D. SMALL, ESQ.

Pamela A. King
Official Court Reporter
Oswego County Courthouse

Pamela A. King
Official Court Reporter

V & D PROPERTIES VS SECURITY NATIONAL - BENCH DECISION 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: We have a water loss claim on an insurance policy issued by the defendant. A floor drain in plaintiff's premises overflowed, and the overflow was resolved when plaintiff snaked the drain. Both parties have moved for summary judgment.

I'm more persuaded by Mr. Small's argument. Plaintiff's motion for summary judgment must be respectfully denied. See Pichel v. Dryden Mutual Insurance Company, 40 Miscellaneous 3d, 679 out of Tompkins County. It was modified by the Appellate Division; 117 Appellate Division 3d, 1267, Third Department 2014, on a other coverage issue that doesn't really apply to this matter.

Turning to the defendant's motion, the Court has reviewed the entire insurance policy presented. The policy contains a, quote, "sewer and drain exclusion" but does not contain extended coverage for a discharge or overflow from plaintiffs' plumbing system. At most what would be covered under the policy would be broken or cracked pipes, and that is not the situation presented.

The Court finds that Newlo Realty Company versus UFF&G, 213 Appellate Division 2nd, 295

Pamela A. King
Official Court Reporter

V & D PROPERTIES VS SECURITY NATIONAL - BENCH DECISION 3

1 First Department 1995, and even Pichel v Dryden
 2 Mutual Insurance Company, cite previously
 3 provided, the event here was not included within
 4 the coverage and was in fact excluded.
 5 Defendant's motion for summary judgment is, thus,
 6 granted. The action is dismissed on the merits
 7 and with prejudice. The Court understands and
 8 notes that the 25,000 paid under the additional
 9 language, it has in fact been paid and
 10 acknowledged.

11 And, Mr. Small, if you would kindly submit
 12 the order, that would be much appreciated. Thank
 13 you, counsel. Have a nice weekend. Good luck to
 14 you, Mr. Small.

15 MR. LONGSTREET: Decision part of the order?

16 THE COURT: Yes.

17 MR. SMALL: Is it all right if I fly home,
 18 prepare the order when I get home, attach the
 19 decision, and send it up?

20 THE COURT: Yes, that will be fine.

21 * * *

22
 23
 24
 25

Pamela A. King
 Official Court Reporter

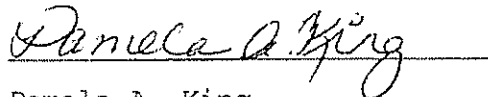
V & D PROPERTIES VS SECURITY NATIONAL - BENCH DECISION 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Pamela A. King, hereby certify that the proceedings and evidence are contained fully and accurately in the stenotype notes taken by me on the above cause.

I further certify that this is a true and correct transcript of same to the best of my ability.


Pamela A. King

Pamela A. King
Official Court Reporter